

RECEIVED

JUN 14 1995

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Interconnection and Resale) CC Dkt. No. 94-54
Obligations Pertaining to)
Commercial Mobile Radio)
Services)

To: The Commission

DOCKET FILE COPY ORIGINAL

COMMENTS OF IN-FLIGHT PHONE CORPORATION

The FCC should not adopt rules requiring 800 MHz air-ground licensees to (1) interconnect their networks with other CMRS licensees, (2) permit resale of their air-ground service, and (3) provide roaming capability. As shown below, new government rules requiring air-ground licensees to interconnect with other CMRS licensees or to permit resale of air-ground service would cause more harm than good. And a new government rule requiring air-ground licensees to provide roaming capability would be irrational.

BACKGROUND

Three companies -- In-Flight, Claircom, and GTE -- provide 800 MHz air-ground service, a communications offering which enables passengers on board aircraft to make telephone calls to any telephone number.^{1/} The FCC's rules do not contemplate accepting applications for license to operate additional air-ground net-

^{1/} Regulations governing 800 MHz air-ground service are located at 47 C.F.R. §§ 22.857 et seq.

No. of Copies rec'd 045
List A B C D E

works.^{2/} Each of the three air-ground licensees has constructed its own nationwide air-ground network. Each network is composed of more than 80 terrestrial transmitters which are spread across the continental United States and which provide nationwide signal coverage from the air. An airline passenger's call is transmitted to the ground station of the licensee serving the caller's aircraft that is closest to that aircraft at the time the call is made. A call received by a ground station reaches its ultimate destination because each ground station is connected to the terrestrial long distance network.

The Commission asks for comments in its Second Notice on whether to require each CMRS licensee, including each air-ground licensee, to interconnect its network with any other CMRS licensee requesting such interconnection.^{3/} It also asks whether it should study whether each CMRS licensee, including each air-ground licensee, should be required to provide roaming capability.^{4/} Finally, it asks whether it should require each CMRS licensee, including each air-ground licensee, to permit resale of the licensee's service.^{5/}

^{2/} See Air-Ground Teleph. Service, 5 FCC Rcd. 3861, 3874 (1990) ("Applicants [for air-ground licenses] will have until Oct. 15, 1990 to submit their applications. . . .We anticipate that this will be the only filing window to operate in this service.")

^{3/} Second Notice at ¶¶ 28-44.

^{4/} Id. at ¶¶ 54-59.

^{5/} Id. at ¶¶ 83-97.

DISCUSSION

The Commission should not adopt a rule requiring each 800 MHz air-ground licensee to permit any other CMRS licensee to interconnect its network with the air-ground licensee's network since that rule would cause more harm than good. This is because there is no business reason any CMRS provider would want to connect with an air-ground network.

First, no air-ground licensee would have a business need to interconnect its network with the network of another air-ground licensee since each air-ground licensee already operates its own stand-alone network providing nationwide coverage as explained above. But even if one air-ground licensee had only a regional network, it would not be technologically possible for that licensee to interconnect with the ground transmitters of another air-ground licensee in order to provide nationwide coverage. This is because the transmission technology used by each air-ground licensee is technologically incompatible with the transmission technology used by each other air-ground licensee.

Nor is it likely that any other type of CMRS licensee ever would have a business need to interconnect with an air-ground network. This is because the amount of air-ground traffic transferred to the CMRS licensee via the direct connection would be too small economically to justify the connection given that the vast majority of calls from aircraft would be to telephone numbers outside the interconnecting licensee's coverage area. For example, a cellular licensee serving Los Angeles would have no business

reason to want direct connection to an air-ground base station in Los Angeles since only a small percentage of telephone calls received by the Los Angeles base station would be to Los Angeles telephone numbers. Instead, as indicated above calls are received by the Los Angeles base station only because it is the closest base station to the aircraft from which the call originates. An even smaller number of calls received by the Los Angeles base station would be to cellular phone numbers in Los Angeles, and perhaps only half of those would be directed to cellular phone numbers of the interconnecting cellular licensee since each community is served by two cellular licensees.

Even if direct interconnection were economically rational for the CMRS licensee requesting it (which it is not), there still is no reason for an FCC rule mandating it. This is because the air-ground licensee would have an economic incentive to grant the interconnection request on reasonable terms since the air-ground industry is highly competitive.

Not only should the Commission refrain from adopting a rule requiring 800 MHz air-ground licensees to interconnect with any other CMRS licensee, it also should exempt the 800 MHz air-ground service from any study about whether to require CMRS licensees to provide roaming capability. This is because the concept of roaming is inapplicable to air-ground service. Roaming is a service which enables customers to make or receive calls when they are outside their own licensee's geographic service area but within the geographic service area of another licensee providing comparable

service. An 800 MHz air-ground licensee does not need to provide roaming capability in order to accomplish the objective roaming is designed to achieve since each air-ground licensee already provides nationwide service as explained above.

While there might be a theoretical justification to require a regional air-ground licensee to provide roaming capability, the question of whether to do so is moot since there is unlikely ever to be a regional air-ground licensee as discussed above. But even if there were a regional air-ground licensee, a government rule requiring that this licensee provide roaming capability would make no sense because it would be economically and technologically infeasible for that licensee to provide this capability since each air-ground licensee uses different transmission technology to provide air-ground service.

Nor should the FCC subject air-ground licensees to a rule requiring them to permit resale of their service because it is not economically feasible to provide telephone service on-board aircraft by reselling air-ground service for several reasons. First, a reseller of air-ground service, unlike a reseller of other telecommunications service, would have to make a major investment in CPE since air-ground CPE is custom made for each service provider. In addition, a party desiring to resell air-ground service, unlike someone wanting to resell another type of communications service, must obtain the consent of two groups before providing service, and the requirement to obtain this consent would be a substantial disincentive to market entry by a would-be air-ground reseller.

First, a reseller would be able to get into business only if it obtained the consent of the airline whose aircraft it desires to serve. This is a substantial undertaking as any of the three air-ground licensees can attest. Second, a would-be reseller not only would have to make a major investment in CPE as discussed above, it also would have to get that CPE approved by the FAA. This too is a significant undertaking.

Not only is it unlikely that a market for air-ground resale ever can develop for economic reasons, there also is no reason for the FCC to require resale. At most, a government-imposed resale obligation makes sense in communications markets that are not fully competitive. In those markets, incumbents may have a predatory incentive to deny companies the ability to resell their service. But since the air-ground market is fully competitive as discussed above, no air-ground licensee would have this incentive.

Nor would a rule requiring air-ground licensees to permit resale of their service promote the desirable objective it has served in other markets of helping new licensees initiate service before they complete construction of their own networks. All three air-ground licensees already have fully constructed their nationwide air-ground networks, and the FCC does not anticipate issuing additional licenses as explained earlier. Moreover, a CMRS licensee of another type (e.g., a broadband PCS licensee or a paging licensee) could not get a foothold in its service market prior to constructing its network by reselling air-ground service since air-ground service is not a substitute for any other CMRS service.

Requiring air-ground licensees to permit resale of their service also could create a significant regulatory burden on the FCC to establish service pricing -- a regulatory burden similar to that which caused the agency to reject a request that it force CMRS licensees to establish separate prices for the transmission and switching components of their CMRS service.^{6/} An FCC rule requiring air-ground licensees to provide their service to resellers could cause a regulatory burden for the Commission to set prices since resale of air-ground service would not be economic unless an air-ground licensee offered service on a bulk-discount basis to the would-be reseller. But air-ground licensees, unlike other CMRS licensees, do not presently offer service on a bulk-discount basis since there are no bulk users of air-ground service. With a resale requirement in place, a dispute could occur on the question of how big a discount should be provided in the event a would-be reseller sought a bulk-discount rate. And the FCC almost certainly would be called upon to resolve this dispute.

The FCC's own experience with mandating air-ground resale on a temporary basis also should dissuade the agency from imposing a resale requirement on air-ground licensees on a permanent basis. In 1991 -- at a time when GTE Airphone was the only air-ground licensee -- the FCC required that company to permit resale of its air-ground service. The Commission speculated that a government rule requiring resale might allow new entrants into the air-ground

^{6/} Id. at ¶ 96.

market.¹⁷ But no one ever provided air-ground service by reselling GTE Airphone's service, and to In-Flight's knowledge no one ever even expressed interest in entering the air-ground market through resale due to the infeasibility of doing so as discussed above. Rather than seeking to enter the market through resale, both In-Flight and Claircom chose instead to spend hundreds of millions of dollars each to construct their own nationwide air-ground networks.

CONCLUSION

For reasons discussed above, the Commission should not adopt rules requiring 800 MHz air-ground licensees to interconnect their networks with any other CMRS licensee or to permit resale of air-

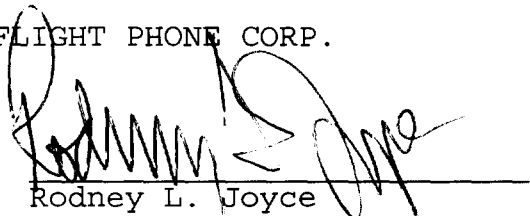
¹⁷ Air-Ground Teleph. Service, 6 FCC Rcd. 4582, 4584 (1991).

ground service. Nor should the agency study the question of whether to require air-ground licensees to provide roaming capability.

Respectfully submitted,

IN-FLIGHT PHONE CORP.

By:



Rodney L. Joyce
Ginsburg, Feldman and Bress
Chartered
1250 Connecticut Avenue, NW
Washington, DC 20036
202-637-9000

Its Attorneys

William J. Gordon
V.P. Regulatory Affairs
In-Flight Phone Corp.
1146 19th Street, N.W., Suite 200
Washington, D.C. 20036

Dated: June 14, 1995